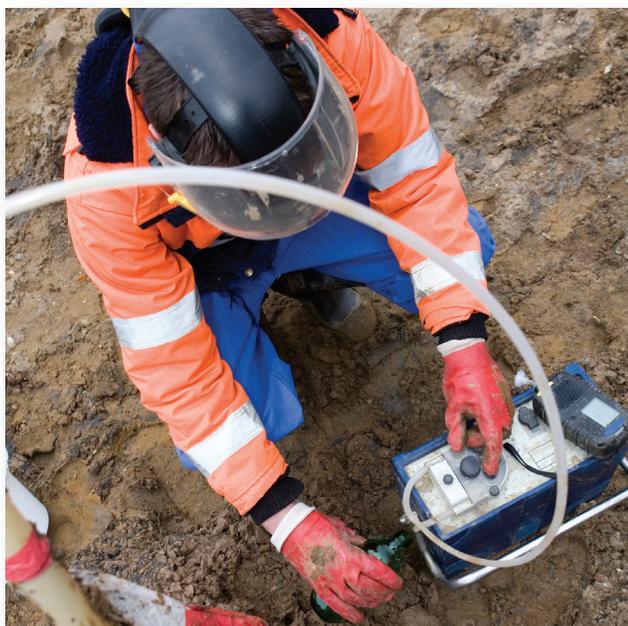


REPORTING SPILLS OF HAZARDOUS CHEMICALS

Four Essential Questions to Ask



Multiple federal, state and local statutes require companies to report spills of hazardous materials. It is critically important to understand in advance when and how a spill should be reported in order to reduce the risk of criminal and civil liability.

It is not always clear when a reportable spill has occurred. The following questions can help determine when and to whom a spill needs to be reported.

1. Which environmental reporting requirements are potentially applicable to the spill?

U.S. Congress has enacted several statutes that impose reporting obligations in connection with chemical releases. The most important are:

- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund Law, requires notification in the event that a sufficient quantity of a “hazardous substance” is “released” from a “facility” into the “environment.”
- The Emergency Planning and Community Right-To-Know Act (EPCRA), expands reporting requirements for facilities that produce, use, or store “extremely hazardous substances.”
- The Clean Water Act extends federal spill reporting requirements to “discharges” into water or onto adjacent shorelines of certain chemicals, uncontaminated crude oil and petroleum-products materials that are exempt from CERCLA/EPCRA.
- The Resource Conservation and Recovery Act (RCRA) creates reporting requirements for companies generating, storing, treating or disposing of “hazardous waste.”

Additional reporting requirements have been established under the Toxic Substances Control Act and the Clean Air Act. Furthermore, many states have their own spill-reporting laws. It is also important to review the provisions of any environmental permits that the company holds, as chemical spills may constitute permit violations that require agency notification. Owners and operators of underground storage tanks should also be mindful of special reporting requirements that may apply to them.

2. Does the spilled chemical fall into a class of materials covered by the reporting law?

For example, CERCLA/EPCRA reporting is not required unless the released material appears on the CERCLA list of “hazardous substances” or on the EPCRA list of “extremely hazardous substances.” These two statutes list over 800 elements, chemical compounds, and industrial wastes. The Clean Water Act also has its own list of “hazardous substances” that is more expansive than the one set forth under CERCLA. RCRA reporting is generally required only in connection with releases of “hazardous waste.”

3. Has a threshold reportable quantity been released/spilled?

Under CERCLA/EPCRA, the reportable quantity applies to all materials released during a single 24-hour period. Reportable quantities range from one pound, in the case of many CERCLA hazardous substances and all EPCRA extremely hazardous substances, to 5,000 pounds. If less than a reportable quantity is released, no report is required. The Clean Water Act also establishes reportable quantities for hazardous substances, as defined under that statute; however, that statute also requires notification for discharges of uncontaminated oil and petroleum products that cause a film, sheen, discoloration, sludge, or emulsion, or that violate any water quality standards.

4. What needs to be reported, to whom, and by what means?

Releases covered by CERCLA and the Clean Water Act must be reported by phone to the National Response Center (NRC) by calling 800-424-8802. Certain RCRA releases are also reportable to the NRC, whereas, for others, notification must be made to the state or local agency responsible for regulating hazardous wastes.

Facilities subject to EPCRA reporting must notify the appropriate local officials, including the state emergency response commission. Most spill notifications must be made in both oral and written form. The party making the notification should generally be prepared to provide information on:

- The name and identity of the spilled chemical.
- Whether the substance is a “hazardous substance,” “extremely hazardous substance,” or “hazardous waste.”
- The quantity released into the environment.
- Whether the release was to water, land, or air.
- The time and duration of the release and the area affected.
- Known or anticipated health risks and advice regarding medical treatment

Failure to comply with spill reporting laws may result in civil or criminal liability, including possible imprisonment.

This bulletin is intended to provide only a cursory overview of spill-reporting requirements. In practice, the interpretation of spill-reporting laws and regulations may be a complex matter. We therefore advise you to notify outside counsel as soon as possible after receiving news of a potentially reportable release.